THE RATING ACT 1874.

BY DANBY P. FRY, ESQ.

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1874.

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of Incoln's Inn, Barrister-at-Law.

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INTRODUCTION.

DURING the Session of Parliament in 1873, Mr. Stansfeld, then President of the Local Government Board, introduced into the House of Commons a Bill "to amend the Law respecting the liability and valuation of property for the purposes of Rates and Taxes."

This Bill dealt with various classes of property which were exempt from assessment to the Poor and other Rates, and provided for the removal of that exemption. The classes of property thus dealt with were mines, woods, rights of sporting, lands and buildings occupied by scientific or literary societies, borough property under 4 & 5 Wm. IV., c. 48, property occupied by any local authority for any purpose of government or otherwise, and property occupied by the Government. It was also framed to render perpetual the exemption of stock-in-trade from rating.

The Bill, after being very fully discussed and considerably altered, was finally passed by the House of Commons; but when brought up to the House of Lords (21st July, 1873) it was rejected.

A change of Ministry having occurred, and a new Parliament having assembled early in the year 1874, a Bill "to amend the Law respecting the liability and valuation of certain property for the purpose of Rates,"

was brought into the House of Commons on 11th May, 1874, by Mr. Sclater-Booth, then President of the Local Government Board; and having passed through both Houses of Parliament, received the Royal Assent on the 7th August, 1874.

The Act thus passed (termed "The Rating Act, 1874") is confined to three classes of property—woods, rights of sporting, and mines; and does not extend to the other properties which were dealt with in Mr. Stansfeld's Bill of the preceding year.

Woods.

In introducing the Bill, Mr. Sclater-Booth said:—

"According to the Statute of Elizabeth, salable underwoods were now subject to rating. It was proposed by the present Bill to repeal that liability under the Statute of Elizabeth, and to enact, not only that salable underwoods, but that all land occupied by plantations and woods of various descriptions should be subject to rates. In the existing state of the law, the fact that underwood was rated was supposed to imply that woods of other descriptions were not to be rated. It might be questioned whether it was more expedient to lay down in the Bill detailed provisions under which the rating of woodlands should be effected, or whether it would be better to leave the matter in the hands of the Assessment Committees throughout the country, which had shown themselves capable of dealing with difficult and complicated questions of rating. He did not say that no objection had been raised to the action of

those Committees, but they had acquired considerable experience and authority in the discharge of their functions. The right hon. gentleman opposite (Mr. Stansfeld), therefore, in introducing his Bill last year, thought it enough simply to provide for the rating of these properties; but the House took a different view, and, after much discussion, provisions were adopted with regard to the mode in which they should be rated. The provisions of the present measure were substantially the same as those inserted by the House itself last year, but somewhat improved, he hoped, in their form. It was proposed that if land was used only for plantations or woods, the value should be estimated as if it were let and occupied in its natural and unimproved state. There was a provision that underwoods should be rated as they were under the Statute of Elizabeth."

Mr. Read (the Parliamentary Secretary of the Local Government Board) observed:—

"It had been said, in the course of the present discussion, that it would be impossible to value trees growing in a wood. That was quite true; and all that it was proposed to do was to find out what it would be reasonably worth while to let them for, from year to year. It had, moreover, been said that it would be unjust to rate wood lands as one would rate land at the exterior of a wood, the value of which was greatly enhanced by reason of the houses, roads, &c., that were in the neighbourhood. An endeavour was made to avoid this error by using the words 'natural and unimproved value,' which occurred in the Scotch Act."

Assuming that woods were purposely omitted from rating under the Statute of Elizabeth, it is not easy to ascertain what may have been the ground or object of that omission; and on this point the present editor, in another work ("The Union Assessment Committee Acts," 5th edition, 1870, pp. 34—37), made the following remarks:—

"That Act (43 Eliz., c. 2) was passed in 1601; and although the stages of its progress are recorded in the Journals of Parliament, the debates are not recorded, and it is therefore, perhaps, impracticable now to ascertain the grounds on which 'coal mines,' and no other mines (as well as 'salable underwoods,' and no other woods), were mentioned in it. In the published Journals of the House of Commons, printed by order of the House in 1803, there is no entry relating to the Parliaments held during the later years of Elizabeth's reign, and that work therefore affords no information as to the proceedings of the Parliament held in 1601. From the Journal of the House of Lords, however, it appears that the Act passed very rapidly through that House, and apparently without much, if any, discussion. It was introduced from the House of Commons on the 16th and passed on the 17th December. At that time there were early morning sittings; and also afternoon sittings, at 2 o'clock P.M. The entries in the Journal are as follows:—

"'A.D. 1601.—Wednesday, 16 December—ante meridiem.

"'Hodie allatae sunt a Domo Communi.

" 'Presented by { Mr. Secretary Cecil, Sir Walter Raleigh, } and others.

* * * *

" '6°.—An Act for Relief of the Poor.

* * * *

" 'Dominus Custos Magni Sigilli continuavit praesens Parliamentum usque ad horam secundam post meridiem instantis diei.

" '16 December—post meridiem.

" 'Hodie prima vice lecta est Billa, an Act for the Relief of the Poor.

" 'Thursday, 17 December—ante meridiem.

" 'Hodie secunda vice lecta est Billa, an Act for the Relief of the Poor.

" 'Dominus Custos Magni Sigilli continuavit praesens Parliamentum usque ad horam secundam post meridiem instantis diei.

" '17 December—post meridiem.

" 'Hodie tertia vice lecta est Billa, an Act for the Relief of the Poor.'

"It thus appears that the Bill was brought from the Commons in the morning sitting on the 16th December, and read the first time in the afternoon sitting on the same day; and that it was read the second time in the morning sitting, and the third time in the afternoon sitting, on the 17th December. It seems to have received the Royal Assent on Saturday, the 19th December, on which day the Parliament was dissolved.

"This was, in fact, a very short Parliament, its duration being less than two months. It was opened

on Tuesday, the 27th October, and was closed on Saturday, the 19th December. The Queen was present at the opening, but made no speech; and the entry in the Journal is as follows:—

"'Anno a Christo nato 1601, Regni Serenissimae Reginae nostrae Elizabethae quadragesimo tertio, die Martis, 27° mensis Octobris:—

"'This day, the Lord Keeper, by Her Majesty's Commandment, delivered, by an oration to the House, the causes that moved Her Majesty to summon and to hold this Parliament.'

"The dissolution, at the afternoon sitting on Saturday, the 19th December, is thus recorded:—

"'Dominus Custos Magni Sigilli, ex mandato Dominae Reginae, dissolvit hoc praesens Parliamentum.'

"One reason for the great haste with which the business was despatched is to be found in the following entry in the Journal of the House, under the date of Thursday, 10th December:—

"'MEMORANDUM—That the Lord Keeper did signify unto their Lordships, that he received commandment from Her Majesty, to let them understand Her pleasure to be, that the Parliament shall end upon Thursday, the 17th, or Friday, the 18th, of this instant, at the farthest; to the end their Lordships may repair home into their countries against Christmas; and therefore she requireth them to employ and spend that time which remaineth in matters concerning the Publick, and not in private causes.'

"It has been supposed that the exemption might

have been granted for the distinct purpose of encouraging the growth of timber. This is merely a conjecture, though a plausible one; but it has been thought to derive some support from the 'Act for the Preservation of Woods' (35 Hen. VIII., c. 17), which was passed in 1544, in consequence of the great decay of timber and woods universally in England, threatening scarcity and lack as well of timber for building houses and ships as of fuel and firewood.* This Act was amended by the 13 Elizabeth, c. 25, passed in 1570; and there is no doubt that at that period great alarm was felt with respect to the destruction of woods, as is further shown by the following Act of the Scottish Parliament, passed in 1609, in which, moreover, a very different view from that now entertained is taken of the value of iron:—

† "'Forasmuch as it has pleased God to discover certain veins of rich metal within this kingdom, as also certain woods in the Highlands, which woods by reason of the savageness of the inhabitants thereabout were either unknown or at the least unprofitable and unused: And now the Estates presently convened being informed that some persons upon advantage of the present general obedience in those parts would erect iron mills in the same parts, to the utter wasting

* This Act states in the preamble, that there was "great and manifest likelyhood of scarcity and lacke, as well of tymber for buyldinge, making, repayring, and mainteyning of houses and shippes, as also for fewell and fyre wood for the necessarie relief of thole comynaltie of this Realme."

† The orthography is here modernized.

and consuming of the said woods, which might be reserved for many better uses, and upon more choice and profitable metals, for the honour, benefit, and estimation of the Kingdom,—

"'Therefore the Estates presently convened statute and ordain, and therewith command, charge, and inhibit all and sundry His Majesty's lieges and subjects, That none of them presume nor take upon hand to work or make any iron with wood or timber, under the pain of confiscation of the whole iron that shall be made with the said timber, to His Majesty's use; And ordain publication to be made hereof by open proclamation at all places needful, wherethrough none pretend ignorance of the same.'

"It is clear, however, that the Acts of Henry the Eighth and Elizabeth, above referred to, showed as much care for underwood as for timber, the scarcity of fuel being dreaded quite as much as the lack of building materials; and those Acts, therefore, can hardly be regarded as proving that the 43 Eliz., c. 2, passed in 1601, while it made underwoods ratable, was intended to leave timber trees exempt. A different explanation is suggested in the following passage in the 'Report on Local Taxation,' made to the Home Secretary by the Poor Law Commissioners in 1843 (8vo edition, p. 33):—'Salable underwoods were made liable to the tax, and other woods and timber exempted, probably in accordance with the rest of the policy of the Act of Elizabeth, which appears to have intended in all cases to charge the occupiers of property, and to exempt the interests of the owners.

Salable underwoods were almost invariably farmed out, while wood and timber was reserved by the landowner. It seems to have been thought that the tax could be laid on the occupier without affecting the owner. Although this conclusion is not consistent with the more accurate views of modern times in relation to rent and taxation, a great variety of passages in the Reports show that such a belief did prevail extensively, and for a long period subsequent to the passing of the Statute of Elizabeth.' This explanation also is quite conjectural; and there is a third view which appears to be more probable than either of the foregoing. If tall wood was really intended to be exempted, whilst underwood was made liable, the distinction is perhaps most likely to have been based on the consideration that underwoods yield a rapid and periodical profit, whilst timber trees are slow in growth, and can only be made to realize a profit after long intervals of time. This consideration is still applicable, and would undoubtedly raise a difficulty in the actual assessment of woods, if they were legally ratable."

The difficulty here referred to is met in the Act now passed by the provision as to assessing the land according to its value "in its natural and unimproved state," instead of assessing the woods themselves.

In the same work the following observations were made with respect to the probable extent of the wood lands that might be brought into assessment:—

"It is difficult to estimate the value of the wood

lands of England, owing to the want of trustworthy data, or to conjecture what would be their ratable value if brought into assessment. In McCulloch's 'Descriptive and Statistical Account of the British Empire' (4th edition, 1854), the yearly product of the woods in England is estimated at 'from £1,500,000 to £2,000,000;' and in another part of the same work it is set down at the medium between these limits—viz., £1,750,000. It is believed, on other grounds, that the proportion of acreage under woods and plantations may be reckoned at about five per cent., or one-twentieth of the entire acreage of the country; and if so, that its ratable value might be about £2,000,000. Some portion of this property is already rated under the description of 'salable underwood;' and the available statistics are not of such a character as to render the conclusion one which can be accepted without considerable hesitation and reservation, independently of the difficulty of determining the principle of assessment."

Since this was written (in 1870) more accurate statistics have been obtained. The agricultural statistics collected by the Board of Trade, which were commenced in 1866, did not at first include any account of wood lands; but in 1871 returns were obtained, which showed that in England 1,314,316 acres, and in Wales 126,625 acres, were occupied with woods, coppices, and plantations ('Agricultural Returns of Great Britain, 1871: Presented to both Houses of Parliament by command of Her Majesty;' p. 7). The Report for the next year

stated:—"As regards woods and plantations, for which a return was first obtained in 1871, the collecting officers were instructed in 1872 to examine the first returns with the view of testing their general accuracy, and in consequence of this examination the acreage of wood land was slightly increased for England, for which it now stands at 1,325,765 acres, and at 126,823 for Wales" (see 'Agricultural Returns, 1872,' p. 11). In the following year it is stated that "the land under woods and plantations is not considered to vary sufficiently to require a new return to be taken annually." (See 'Agricultural Returns, 1873,' p. 8). The detailed return for the several counties in England and Wales is as follows (*ibid.* pp. 54, 55):—

ACREAGE FOR ENGLAND.

Bedford	10,394	Monmouth	28,584
Berks	30,780	Norfolk	44,251
Buckingham ..	24,486	Northampton ..	24,142
Cambridge	5,035	Northumberland ..	31,221
Chester	11,921	Nottingham	23,640
Cornwall	26,374	Oxford	15,563
Cumberland	24,380	Rutland	3,094
Derby	23,406	Salop	39,699
Devon	66,191	Somerset	39,658
Dorset	29,388	Stafford	33,101
Durham	21,904	Suffolk	32,562
Essex	29,061	Surrey	48,094
Gloucester	41,295	Sussex	101,331
Hants	87,229	Warwick	18,529
Hereford	34,885	Westmoreland ..	15,845
Hertford	20,714	Wilts	40,419
Huntingdon	2,582	Worcester	16,904
Kent	78,164	York, E. R. ..	11,357
Lancaster	34,516	,, N. R. ..	46,020
Leicester	9,688	,, W. R. ..	60,740
Lincoln	35,444		
Middlesex	3,174	Total ..	1,325,765

ACREAGE FOR WALES.

Anglesey	1,198	Glamorgan	19,864
Brecon	9,233	Merioneth	10,685
Cardigan	11,257	Montgomery ..	18,873
Carmarthen	15,577	Pembroke	5,969
Carnarvon	6,757	Radnor	8,523
Denbigh	13,512		
Flint	5,375	Total ..	126,823

RIGHTS OF SPORTING.

In introducing the Bill Mr. Sclater-Booth said:—

"The second object of the Bill was to render the right of sporting, when separated from the land, ratable. This was a vexed question, and probably many hon. members would be of opinion that such rights were of too vague a character for their ratable value to be ascertained, but in his opinion that value could be easily ascertained by the Assessment Committee; and although it involved but a small amount of money, the question was one on which it was far too late to go back, after all that had been said on both sides of the House with regard to it. The sub-section of this clause provided for the exceptionally rare case where the owners possessed the right of free warren."

In 1868, a Bill was brought into the House of Commons by Mr. Read, "to assess Woods and Game to Local Rates;" and the provision which it proposed to make as to the mode of rating was as follows:—

"For the purpose of assessing land let for agricultural purposes, the gross estimated rental shall be the full rent at which the land, irrespective of any reservation for game or timber, might reasonably be

expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, if any; and when such land is occupied by the owner, the gross estimated rental shall be so assessed without any deduction whatever for any game or timber which may tend to depreciate the agricultural value of the land."

That Bill did not pass: and the provisions made in the present Act are somewhat different.

In the present state of the law, as interpreted by the Court of Queen's Bench, whenever the occupation of the land is enhanced in value by the right to take the game, the assessment is required to be based upon such enhanced value. In such a case, the occupier (whether owner or tenant) is ratable in respect of the value of his occupation, regarded as a whole. This was so decided in Reg. *v.* Williams (23 L. T. 76; 5 Jur. (N.S.) 821). In that case the tenant took the farm at an annual rent, without the privilege of taking the game and rabbits; and afterwards he agreed to pay an additional rent for that privilege. The Court held that the tenant was ratable in respect of the value of this privilege as well as the value of the farm, on the ground that if he had originally rented both, he would have been liable to be so rated; and the fact that he had acquired one subsequently to the other made, in the opinion of the Court, no difference. This case was the case of a tenant; but it seems clear that the decision applies equally, in principle, to an owner who occupies his own estate; such owner being

ratable for the full value of his occupation, precisely like a tenant.

The same principle will apply also where the land which is rented or occupied has little or no value except for sporting purposes, that is to say, for the purposes of preserving, taking, killing, and selling the game. It is not necessary that this privilege should be attached to a farm or to land otherwise valuable; if the land is occupied for the sake of the game, its ratable value must be determined accordingly, and it will not be exempt from assessment on the ground of its not being occupied for other purposes. Thus, a moor which may be occupied by the owner, or let to a tenant for the sake of the game, will be ratable, as land so occupied, in respect of the value of such occupation. In such a case the right of sporting would not be severed from the occupation of the land, but enjoyed in connection with it.

Where the land is let to a tenant, the owner reserving to himself the right of taking the game, the tenant is ratable to the extent of the value of his own occupation only, according to the decision of the Court of Queen's Bench in Reg. *v.* Thurlstone (5 Jur. (N.S.) 820; 32 L. T. 275; 1 E. & E. 502; 28 L. J. (N.S.) M. C. 106). In that case the tenant of pasture land, on which the owner reserved his right to the game, was assessed for the entire value, including the right to the game; and the Court held this to be wrong, as the tenant was only ratable in respect of his occupation of the land for pasture, and was not ratable in respect of the right to the game, which he

did not in fact possess. Wightman, J., observed:—"The statute 1 & 2 Wm. IV., c. 32, recognizes such a reservation; and the tenant has the land much less valuable without the right than it would be with it. The effect of the reservation, with the statute, is to separate the two tenements. All that the tenant has is the occupation of the land, irrespective of the right to shoot."

The two decisions in Reg. *v.* Williams and Reg. *v.* Thurlstone are consistent with and complementary to one another. In both cases it was held that the occupier was ratable for that which he occupied, and for that only. In the first, the occupier who possessed the right of shooting was held ratable accordingly; in the second, the occupier who did not possess that right was held to be ratable only for what was demised to him, and not to be ratable for that which he did not possess.

In the later case of Reg. *v.* The Battle Union (36 L. J. (N.S.) M. C. 1; 15 L. T. (N.S.) 180; 12 Jur. (N.S.) 996; L. R. 2 Q. B. 8), where the owner of land occupied it himself, and leased to another the right to take the game, it was held that the rent received by him for the exercise of that right ought not to be deducted in estimating the ratable value of the land in his occupation. Here there was no severance of the interests; for the owner, though he let the shooting, received the rent for it, while he was himself occupying the land.

Where, however, under an Inclosure Act, the right of shooting had been completely severed from the

ownership of the land, so as to become simply an incorporeal hereditament, it was held that no one was liable to be rated for it: Hilton and Walkerfield *v.* Bowes (35 L. J. (N.S.) M. C. 137; 14 L. T. (N.S.) 512; L. R. 1 Q. B. 359). The general result of these decisions was, that sporting rights, when held in conjunction with the occupation of the land, were ratable, the value of the rights being included in the ratable value of the land; but that when "severed," or held apart or separately from the occupation of the land, they were not ratable. On the former point the law remains unaltered; but the present Act deals with the latter point, and makes the sporting rights liable to be rated, when severed from the occupation of the land. In doing this, the Legislature has resorted to the exceptional proceeding of rating an incorporeal hereditament by itself.

Mines.

On the introduction of the Bill, Mr. Sclater-Booth remarked:—

"He then came to by far the most important subject dealt with by the measure—that of the rating of mines. Hon. members were aware that, coal mines alone being referred to in the Statute of Elizabeth, it had been held that all other mines were exempt from rates; but it had also been decided that where dues and royalties were reserved in kind, they were subject to rates. The clause at the end of the Bill left the dues and royalties liable to be rated as at present; their ratable value being assessed by

the Assessment Committee. . . . Since 1857 as many as four Bills had been introduced into the House with regard to the rating of mines, and if they were rendered liable to assessment on a fair basis, it would be a substantial boon to many parishes in which the most valuable description of property had hitherto been exempted from rates. Under the provisions of the measure all metallic mines, or mines other than coal mines, were made subject to rates; but by clauses 7 and 8 it was provided that tin and copper mines should be assessed according to a special mode." [Lead mines were added during the passage of the Bill.] "As a general rule, metallic mines were to be assessed by the Assessment Committee, and he had received an assurance from many hon. members who were interested in this class of property, that this would be a satisfactory mode of settling the question. He had been informed that the difficulties which formerly prevailed with respect to the rating of coal mines had been satisfactorily overcome; and therefore there could be no doubt that the local value of metallic mines could be ascertained with equal ease. There was a provision in the Bill, that where mines were held upon leases the owners should repay the occupiers the sums they paid for rates until the expiration of the leases."

On moving the second reading of the Bill in the House of Lords, the Duke of Richmond said:—

"The rating of mines was a question which had occupied the attention of both Houses of Parliament. So far back as 1850, a Select Committee of their

Lordships' House made a report in which this opinion was expressed: 'That it is expedient that all mines should be assessed as coal mines are now assessed, inasmuch as the exemption from rates of mineral mines is founded on no sound principle, and depends upon the form of the agreement made between landlord and tenant.' And in 1856-57 a Select Committee of the House of Commons reported, 'That the liability of mines to be rated was full of anomalies. That there was no valid ground for the distinction now existing. That as long as coal mines and quarries were rated, there was no reason why all other mines should not be put on the same footing.' The exemption of mining properties had given rise from time to time to strong expressions of dissatisfaction in different parts of the country. In some agricultural districts the use made of the roads for traffic to and from mines had considerably increased the charges on the rates, to which those mines contributed nothing. In Ireland and Scotland mining property was rated. Again, though royalties if paid in kind were ratable, where they were taken in money they were not ratable; so that now it was perfectly competent for the owner of royalties to obtain an exemption. He had only to take his royalties in money instead of in kind. This Bill would extend rating to mines other than coal mines."

It is somewhat remarkable that the question as to the ratability of mines other than coal mines under the Act of Elizabeth, which was passed in 1601, was

not raised before the Courts until 1762—*i.e.*, 161 years after the passing of the Act; and at that time the Court of Queen's Bench appears to have had no more information as to the intentions of the Legislature upon the subject than we have now. It has been already remarked that the debates on the Bill are not recorded (*ante*, p. 8); and in the first case in which the question was raised, the Court was obliged to form the best opinion it could, from the language of the Act and other circumstances. In that case (as stated in the work above referred to, *ante*, p. 8) "it was contended by counsel (Lead Company *v.* Richardson, 3 Burr. 1341) that lead mines were equally within the reason and meaning of the 43 Eliz., c. 2, as coal mines; and that coal mines were named in the Act by way of instance or example, other mines being intended to be included, as 'when executors only are specified in an Act of Parliament, it shall nevertheless include administrators; and where the warden of the fleet only is particularly named, yet it shall be extended to all jailers.' The case was adjourned, in order that inquiry might be made into the actual practice; and certificates were obtained, which 'tended in general to show that it was not the usage to tax lead mines,' a statement which seems to imply that they were sometimes rated. The lead mines were finally held to be exempt on the ground that 'in the 43 Eliz. coal mines are put as an exception, and not as an example.' In the subsequent case of the Baptist Mill Company (1 M. & S. 612), however, Lord Ellenborough, after

pointing out that the reservation of a royalty in kind was to be regarded as an occupation of the land, observed: 'We might otherwise have been pressed with the question, whether the naming coal mines in the statute was, according to the rule, *expressio unius, exclusio alterius*, to all intents an exclusion of other mines, or was only put for example, as the naming a class in the statute of *circumspecte agatis* (2 Inst. 487); for certainly the judges who have held it to amount to the exclusion of other mines have generally coupled it with this reason, that other mines are subject to risk.' In 1842, again, Chief Justice Tindal, in delivering the judgment of the Court of Exchequer Chamber, in error from the Queen's Bench, in Crease *v.* Sawle (2 Q. B. 862), placed the judgment on the ground that the Court deemed it best to abide by the previous decisions, intimating, however, that they might otherwise have been disposed to put a different construction upon the language of the Act, which would seem to have been framed with a view to render ratable all occupiers of every description of real estate; and it might be very questionable whether occupiers of mines of any description were exempt."

The question has again been recently raised before the Courts. "In Crawshay *v.* Morgan and others (L. R. 4 Q. B. 581) an action was brought against the defendants, the overseers of East Dean, for taking the plaintiff's goods in distress for a poor rate assessed upon him in respect of certain iron mines in the Forest of Dean, the question thus raised being, whether such

mines were ratable under 43 Eliz., c. 2. Judgment for the plaintiff was taken *pro formâ* in the Queen's Bench; and on error, in the Exchequer Chamber, it was held that an occupier of an iron mine is not ratable, coal mines alone being mentioned in the statute. The Court pointed out that the judgment of the House of Lords in Jones *v.* Mersey Docks was only a decision as to the nature of the occupation required to render the occupier ratable, and not as to the subject-matters liable to be rated; and they 'thought it wiser' (in the language of Tindal, C. J., in Crease *v.* Sawle) 'to abide by the construction which numerous decisions have given to the words of the statute, and which has been for a long time acted upon.'" This decision of the Court of Exchequer Chamber has been affirmed, upon appeal, by the House of Lords (24 L. T. (N.S.) 889; 43 L. J. (N.S.) M. C. 202; L. R. 5 Eng. and Ir. App. 304).

There are no adequate data for estimating the probable amount of the ratable value of the mines that will be brought into assessment under the present Act.

The properties affected by the present Act were omitted from the Statute of Elizabeth, which was passed in 1601; and it is an obvious remark that it has taken 273 years to get the omissions supplied. The Act of 1601 was as carefully drawn as it was sagaciously conceived; it passed through the hands of the greatest statesmen of the reign of Elizabeth, being brought up to the House of Lords by Cecil and Raleigh; and it can scarcely be supposed that these

omissions were made without full deliberation, or without cogent reasons. It is clearly fair and equitable that these properties should be rated; but there can be little doubt that the inherent difficulty of rating them on fair and equitable principles must have largely contributed to their original exclusion from the statute, as well as to the subsequent postponement of their assessment for nearly three centuries. The present Act treats them in an exceptional manner. The mode of valuing the wood lands is exceptional; the mode of valuing the tin, lead and copper mines is exceptional; and the rating of incorporeal rights of sporting is equally exceptional. This exceptional treatment has been suggested by the difficulties arising out of the nature of the properties themselves; and the Assessment Committees, in valuing these properties, will doubtless find their labours greatly facilitated by the special provisions, as to the mode of rating, which the present Act contains.

As regards the time at which the Act is to come into operation, reference should be made to the provisions of § 11.

August, 1874. D. P. F.

RATING.

(37 & 38 VICT., C. 54.)

ARRANGEMENT OF CLAUSES.

THE RATING ACT, 1874.

(37 & 38 VICT., C. 54.)

AN ACT TO AMEND THE LAW RESPECTING THE LIABILITY AND VALUATION OF CERTAIN PROPERTY FOR THE PURPOSE OF RATES.

[*7th August, 1874.*]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short Title.

1. This Act may be cited as "The Rating Act, 1874."

Extent of Act.

2. This Act shall not apply to Scotland or Ireland.

Abolition of certain Exemptions from Rating.

3. Whereas by the Act of the forty-third year of the reign of Queen Elizabeth, chapter two, intituled "An Act for the relief of the poor," it is provided that a poor rate shall be raised in every

parish by taxation of, amongst other persons, every occupier of certain hereditaments in such parish; and it is expedient to extend the said Act, and the Acts amending the same (which Act and Acts are in this Act referred to as the Poor Rate Acts), to hereditaments other than those mentioned in the said Act: Be it therefore enacted that—

From and after the commencement (1) of this Act the Poor Rate Acts shall extend to the following hereditaments in like manner as if they were mentioned in the recited Act of the forty-third year of the reign of Queen Elizabeth; (2) that is to say,

(1.) To land (3) used for a plantation or a wood or for the growth of saleable underwood, (4) and not subject to any right of common; (5)

(2.) To rights (6) of fowling, of shooting, of taking or killing game or rabbits, and of fishing, when severed from the occupation of the land; (7) and

(3.) To mines of every kind not mentioned in the recited Act. (8)

(1) See § 11 *infra.*

(2) See note (1) to § 14, *infra.*

(3) In the Bill as introduced into the House of Commons, this clause stood as follows:—

"(1.) To land used for a plantation or a wood, or for the growth of salable underwood, *or for both such purposes;*"

and the next clause ran in the following terms:—

"4. The gross and ratable value of any land used for a plantation or a wood, or for the growth of salable underwood, *or for both such purposes*, shall be estimated," &c.

In Committee the words, "*or for both such purposes*," were omitted in both these clauses; but their omission does not appear to alter the effect of the Act. It will be seen that § 4, subsection (*c*), and § 5, provide expressly for the case of land which is used "both for a plantation or wood, and for the growth of salable underwood"; and that § 12 employs the expression, "for both such purposes." It is clear, therefore, that such land is now liable to be rated, though it is left to the discretion of the assessment committee in each case to determine whether it shall be assessed in respect of the wood or plantation only, or in respect of the salable underwood only. The committee may assess it in respect of its value for one purpose only, or in respect of its value for the other purpose only, but it must be assessed in respect of one or the other.

(4) See § 14, by which so much of the 43 Eliz., c. 2, § 1, as relates to the taxation of an occupier of salable underwoods is repealed. Under the Act of Elizabeth the salable underwood was ratable as such, and not as increasing the value of the land on which it grew. Under the present Act the reverse will be the case; the salable underwood will no longer be ratable as such, but the land on which it grows will be the subject of assessment. This is an important distinction in itself; though its effect under the present Act is greatly modified by the special provisions of § 4. It places the underwoods on the same legal footing as the woods, and this was no doubt done with a view to meet the difficulty which arises with respect to the assessment of woods, whether natural or planted, which are not underwoods (see Introduction, *ante*, p. 13). The assessment committee will not be called upon to value either the woods or the underwoods as such, but to estimate the value of the land used for their growth; and this estimate is to be made in accordance with the directions in § 4. (See the notes thereon.)

(5) Hence, wood land which is subject to any right of common will not be liable to be rated.

(6) These are subsequently referred to in the Act as "rights of sporting"; see § 6 (1), *infra*.

(7) As to the valuation and assessment of these rights, see § 6, *infra*.

(8) As to mines in which the royalty or dues are reserved in kind, see § 13, *infra;* and as to the valuation and assessment of tin, lead, and copper mines, see § 7, *infra.* Mines which are not tin, lead, or copper mines will be ratable in the same manner or on the same principles as coal mines. Under the Statute of Elizabeth, "coal mines" are ratable as such; and as that provision is now extended to "mines of every kind not mentioned in the recited Act," these mines become ratable like coal mines, except as regards tin, lead, and copper mines, for which special provision is made in § 7. It may be observed that quarries have always been ratable; and the distinction between a mine and a quarry is not in the nature of the material which is got, but in the mode of getting it. In a quarry, the mineral, stone, or other material is taken from the surface; in a mine, it is obtained by excavations underground.

Valuation of Land used as Plantation, &c.

4. The gross and rateable value of any land used for a plantation or a wood, or for the growth of saleable underwood, shall be estimated as follows:

(*a.*) If the land is used only for a plantation or a wood, the value shall be estimated as if the land instead of being a plantation or a wood (1) were let and occupied in its natural and unimproved state: (2)

(*b.*) If the land is used for the growth of saleable underwood, the value shall be estimated as if the land were let for that purpose: (3)

(*c.*) If the land is used both for a plantation or a wood and for the growth of saleable underwood, the value shall be estimated either as if the land were used only for

a plantation or a wood, or as if the land were used only for the growth of the saleable underwood growing thereon, as the assessment committee may determine. (4)

(1) It will be observed that in this case the land is not to be valued according to its value for the purpose for which it is used, *i.e.*, for a plantation or wood; but upon a different, and quite exceptional, principle. The principle upon which all property ratable under the Act of Elizabeth is assessed to the poor rate is that of ascertaining its value to let for the purpose for which it is actually used; but in the present instance that principle has been set aside, and a different rule has been laid down, which it will rest with the assessment committees, in the exercise of their judgment, to apply to the circumstances of each particular case. The land is not to be valued necessarily in accordance with the value of adjoining land, which, though of the same natural quality, may have been improved in various ways, but it is to be regarded "in its natural and unimproved state," and valued as if the wood were not there. The result is somewhat remarkable. The land used for a wood or plantation is to be rated; but it is to be valued as if it were not used for a wood or plantation. In many cases the value, determined with reference to the "natural and unimproved state" of the land, may not perhaps be of any great amount. The rule thus established was no doubt suggested by the difficulty of ascertaining the yearly value of a timber tree which is growing; though the difficulty does not seem to apply with equal force to the case of land which may be let for the purpose of growing timber trees. In Scotland, the rule, though somewhat similar, is not precisely the same. Under the "Act for the Valuation of Lands and Heritages in Scotland" (17 & 18 Vict., c. 91), the subjects of assessment are "lands and heritages," which by the interpretation clause (§ 42) are defined to include, amongst other things, "woods, copse, and underwood from which revenue is actually derived"; and the rule for the valuation (§ 6) is as follows:—"In estimating the yearly value of lands and heritages under this Act, the same shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reason-

ably expected to let from year to year; and where such lands and heritages consist of woods, copse, or underwood, the yearly value of the same shall be taken to be the rent at which such lands and heritages might in their natural state be reasonably expected to let from year to year as pasture or grazing lands."

(2) A question has arisen as to whether, in valuing land which is used only for a plantation or a wood, the value of any rights of sporting which may be exercised over such land can be taken into account. If such rights are severed or separated from the occupation of the land, they will be ratable under the provisions of § 3, *supra*, and § 6, *infra;* but if they are not so severed, or in other words, if they are exercised by the person who is the occupier of the wood land, the case will be different. In that case, it is contended, the value of the wood land must be limited by the express terms of the enactment, so that nothing can be included beyond the mere value of the land as land in its natural and unimproved state. On the other hand, the better opinion appears to be, that this limitation of the value merely applies in so far as the land is used only for a plantation or a wood, and does not exclude the consideration of adventitious advantages, such as the rights of sporting. Under § 3, *supra*, such lands are liable to be rated as if they were mentioned in the 43rd Eliz., c. 2; and under that Act, and the other Poor Rate Acts, the ratable value would be enhanced by the value of the rights of sporting, if not severed from the occupation. This is clear, from the decisions of the Court of Queen's Bench, in R. *v.* Williams, and R. *v.* the Battle Union (see Introduction, *ante*, p. 17-19), in which it was laid down "that where the two things (*i.e.*, the right to game and the occupation of the land) are united in the same person, the right to game must be taken as an element in arriving at the ratable value of the occupation." If, therefore, the question depended solely upon § 3 of the present Act, there could be no doubt that in such a case the value of the sporting should be included in the ratable value of the wood land, as enhancing the value of the occupation; and it does not appear that the terms of § 4 (*a*) make any difference in this respect. Under that provision (which must be regarded as a proviso to § 3), the value of the land, so far as it is used only for a plantation or wood, is to be ascertained in a particular manner; but the principles of assessment under the Act of Elizabeth, and the other Poor Rate Acts, are not otherwise interfered with. If so, the value of the unsevered rights of sporting must be added to the

estimated value of the land in its natural and unimproved state, in order to arrive at the full ratable value.

(3) This will practically leave the assessment the same as before. Although the salable underwoods are no longer to be rated as such (see note (3) to § 3, *supra*), yet as the land is to be rated as if it were let for the growth of such underwoods only, the result as regards the value will be the same: see note (1) to § 14, *infra*. A question has been raised with regard to the valuation of unsevered rights of sporting in connexion with the occupation of land used for the growth of salable underwood, similar to the one discussed in the preceding note, with reference to land used for a plantation or wood. There seems, however, to be no ground for such a question; inasmuch as there is no express limitation or restriction as regards the valuation of land used for salable underwood, and the doubt suggested in the case of wood land to which such a limitation or restriction applies, will therefore not extend to the case of land used for salable underwood, which is clearly to be valued according to the ordinary principles of assessment under the Poor Rate Acts.

(4) See note (3) to § 3, *supra*. The land is not to be assessed in respect of its value for both purposes, but only one; and that one is to be selected in each case by the assessment committee. If the committee value the land with reference to the salable underwood growing thereon, the wood or plantation must be disregarded; and if, on the other hand, the committee value the land as if it were used only for a plantation or wood, the salable underwood growing thereon must be disregarded, and the whole of the land must be valued according to the directions of subsection (*a*); that is to say, as if it were let and occupied in its natural and unimproved state.

Deduction of Rate by Tenant of Plantation, &c.

5. Where the rateable value of any land used for a plantation or a wood, or both for a plantation or wood and for the growth of saleable underwood, is increased by reason of the same being estimated in accordance with this Act, the occupier of that land under any lease or agree-

ment made before the commencement (1) of this Act, may, during the continuance of the lease or agreement, deduct (2) from his rent any poor or other local rate, (3) or any portion thereof, which is paid by him in respect of such increase of rateable value, and every assessment committee, (4) on the application of such occupier, shall certify in the valuation list (4) or otherwise (5) the fact and amount of such increase. (6)

(1) See § 11, *infra*. (3) See § 10 and § 15, *infra*.
(2) See also § 9, *infra*. (4) See § 15, *infra*.

(5) As this certificate will be required by the occupier to support the deduction from his rent, he will probably apply to the assessment committee, in most cases, to give it in a separate document. The application is not to be made to the overseers, but to the committee, who are to give the certificate.

(6) This clause does not provide for the cases—which, however, are probably few—where the owner of copyhold lands cannot cut down the trees without the permission of the lord of the manor, to whom a proportion (say one-third) of the value of the timber may also belong. In such cases the copyholder, if charged with the rate in respect of the wood land, will not be entitled to recover any part of it from the lord. It may be observed, however, that although the lord may have a right to the timber, he cannot enter upon the land to cut it without the consent of the copyholder, for he would be a trespasser if he attempted to do so; and the copyholder will be able to make his consent dependent upon a proportionate contribution by the lord towards the rates. Moreover, in case of enfranchisement, the rates may not improperly be taken into account; and where the fines are not fixed, the copyholder can make the rates an element in negotiating the amount.

Valuation and Rating of Rights of Shooting, &c.

6. (1.) Where any right of fowling, or of shoot-

ing, or of taking or killing game or rabbits, or of fishing (hereinafter referred to as a right of sporting) is severed (1) from the occupation of the land and is not let, and the owner (5) of such right receives rent for the land, the said right shall not be separately valued or rated, but the gross (3) and rateable value of the land shall be estimated as if the said right were not severed; and in such case if the rateable value is increased by reason of its being so estimated, but not otherwise, the occupier of the land may (unless he has specifically contracted to pay such rate in the event of an increase) deduct from his rent such portion of any poor or other local rate (2) as is paid by him in respect of such increase; and every assessment committee, (3) on the application of the occupier, shall certify in the valuation list (3) or otherwise (4) the fact and amount of such increase.

(2.) Where any right of sporting, when severed from the occupation of the land, is let, either the owner (5) or the lessee thereof, according as the persons making the rate determine, may be rated as the occupier thereof. (6)

(3.) Subject to the foregoing provisions of this section the owner (5) of any right of sporting, when severed from the occupation of the land, may be rated as the occupier thereof. (7)

(4.) For the purposes of this section, the person who, if the right of sporting is not let, is entitled to exercise the right, or who, if the right is let, is entitled to receive the rent for the same, shall be deemed to be the owner of the right.

(1) See Introduction, *ante*, pp. 16–20. In this section, subsection (1) provides for the case where the land is let and the right of sporting is not let; subsection (2) for the case where the right of sporting is let, being severed or separated from the occupation of the land. As to rights of fishing, see R. *v.* Ellis (1 M. & S. 652).

(2) See § 10 and § 15, *infra*.

(3) See § 15, *infra*.

(4) See note (5) to § 5, *supra*.

(5) See the definition of "owner," for the purposes of this section, in subsection (4).

(6) Where land belonging to the Crown is not let, but the sporting over it is let, the right of sporting, being thus severed from the occupation of the land, is ratable under the express terms of § 3 of the Act; but the Crown, not being expressly named in the Act, cannot be rated under it, and consequently the overseers or other persons making the rate cannot, in such a case, exercise the option given by the clause, § 6, No. 2. It seems to follow that, in such a case, the lessee of the right of sporting must necessarily be rated.

(7) This clause will meet the cases of free warren and free fishery, and other cases in which the owner of the right of sporting may be neither the owner nor the occupier of the land.

Gross and Rateable Value of Tin, Lead, and Copper Mines.

7. Where a tin, lead, or copper mine (1) is occupied under a lease or leases (4) granted without fine (5) on a reservation wholly or partly of dues (6) or rent, the gross value (3) of the mine (1) shall be taken to be the annual amount of the whole of the dues (6) payable in respect thereof during the year ending on the thirty-first day of December (2) preceding the date at which the valuation list (3) is made, in addition to the annual amount of any fixed rent reserved for the same which may not be paid or satisfied by such dues. (6)

The rateable annual value of such mine (1) shall be the same as the gross value (3) thereof, except that where the person receiving the dues (6) or rent is liable for repairs, insurance, or other expenses necessary to maintain the mine (1) in a state to command the annual amount of dues (6) or rent, the average annual cost of the repairs, insurance, and other expenses for which he is so liable shall be deducted from the gross value (3) for the purpose of calculating the rateable value.

In the following cases, namely,—

(1.) Where any such mine (1) is occupied under a lease (4) granted wholly or partly on a fine; (5) and

(2.) Where any such mine (1) is occupied and worked by the owner; and

(3.) In the case of any other such mine (1) which is not excepted from the provisions of this Act (7) and to which the foregoing provisions of this section do not apply;

the gross and rateable annual value (3) of the mine (1) shall be taken to be the annual amount of the dues (6) or dues (6) and rent at which the mine (1) might be reasonably expected to let without fine (5) on a lease (4) of the ordinary duration, according to the usage of the country, if the tenant undertook to pay all tenant's rates and taxes and tithe rentcharge, and also the repairs, insurance, and other expenses necessary to maintain the mine (1) in a state to command such annual amount of dues (6) or dues (6) and rent.

The purser, secretary, and chief managing agent for the time being of any tin, lead, or copper mine, (1) or any of them, may, if the overseers or other rating authority think fit, be rated as the occupier thereof.

In this section—

The term "mine," when a mine is occupied under a lease, (4) includes the underground workings and the engines, machinery, workshops, tramways, and other

plant, buildings (not being dwelling-houses), and works and surface of land occupied in connexion with and for the purposes of the mine, and situate within the boundaries of the land comprised in the lease or leases (4) under which the dues (6) or dues (6) and rent are payable or reserved:

The term "dues" means dues, royalty, or toll, either in money or partly in money and partly in kind; and the amount of dues which are reserved in kind means the value of such dues:

The term "lease" means lease or sett, or licence to work, or agreement for a lease or sett or licence to work:

The term "fine" means fine, premium, or foregift, or other payment or consideration in the nature thereof.

(1) This special provision as to the mode of rating is confined to tin, lead, and copper mines. For the definition of the word "mine," see the last clause of this section. As to the valuation of other mines made ratable by this Act, see note (8) to § 3, *supra*.

(2) This date appears to have reference to the provisions of the "Metalliferous Mines Regulation Act, 1872" (35 & 36 Vict., c. 77), which enacts (in § 10) as follows:—"On or before the first day of August in every year the owner or agent of every mine to which this Act applies shall send to the inspector of the district, on behalf of a Secretary of State, a correct return, specifying, with respect to the year ending on the preceding 31st day of December, the quantity of mineral sold or produced from such mine; . . . . . provided that in any mine

where not more than twelve persons are employed underground, the returns specifying the quantity of mineral sold or produced from such mine shall be made by the barmaster or other officer, if any, employed to collect the dues or royalty."

(3) See § 15, *infra*. (4) See the last clause of this section.
(5) See the last clause of this section.
(6) See the last clause of this section.
(7) See § 13, *infra*.

Deduction of Rate by Tenant of Mine.

8. Where any poor or other local rate (1) which at the commencement (2) of this Act any lessee, licensee, or grantee of a mine is exempt from being rated to in respect of such mine, becomes payable by him in respect of such mine during the continuance of his lease, grant or licence, or before the arrival of the period at which the amount of the rent, royalty, or dues is liable to revision or re-adjustment, he may (unless he has specifically contracted to pay such rate in the event of the abolition of the said exemption) deduct (3) from any rent, royalty or dues payable by him one half of any such rate paid by him:

Provided that he shall not deduct (3) any sum exceeding what one half of the rate in the pound of such poor or other local rate (1) would amount to if calculated upon the rent, royalty, or dues so payable by him.

(1) See § 10, and § 15, *infra* (2) See § 11, *infra*.
(3) See also § 9, *infra*.

General Provision as to Deduction of Rates.

9. Where any occupier, lessee, licensee, grantee, or other person is authorised by this Act to deduct (1) any rate or sum in respect of a rate from any rent, royalty, or dues payable by him, then—

(1.) Any payment so authorised to be deducted shall be a good discharge for such amount of rent, royalty, or dues as is equal to the amount of such payment, and shall be allowed accordingly.

(2.) Any payment so authorised to be deducted may be recovered as an ordinary debt from the person to whom the rent, royalty, or dues may be payable.

(3.) The person receiving the rent, royalty, or dues shall have the same right of appeal and objection with reference to the rate and to the valuation of the hereditament in respect of which the rate is payable as he would have if he were the occupier of such hereditament.

(1) See § 5, and § 8, *supra.*

Liability of Property to Local Rates as well as Poor Rates.

10. After the commencement of this Act (1) the hereditaments to which the Poor Rate Acts are extended by this Act, (2) and which are thus

made rateable to the relief of the poor, shall be rateable to all local rates (3) in like manner as if the Poor Rate Acts had always extended to such hereditaments.

(1) See § 11, *infra.* (2) See § 3, *supra.*
(3) See § 15, *infra.*

Commencement of Act.

11. This Act, for the purpose of enabling any hereditament to be included in or omitted from or valued for the purposes of a valuation list or a supplemental or provisional valuation list which will come into force after (1) the sixth day of April one thousand eight hundred and seventy-five, shall come into operation on the passing thereof; but save as aforesaid, or as is otherwise expressly provided by this Act, shall come into operation on (1) the sixth day of April one thousand eight hundred and seventy-five; and the expression "commencement of this Act" shall in this Act be construed accordingly. (1)

(1) It will be seen that by the terms of this section the Act comes into operation at once, so far as to enable the overseers and the assessment committees to include the properties in question in the valuation lists, or to get them valued for that purpose, although as regards mines under § 7, the provisions as to the 31st December should be borne in mind. It appears, however, that no valuation list in which such properties may be included will come into force until after the 6th April, 1875. The practical result seems to be, that steps may be taken to value these properties so that they may be included in valuation lists, which, subject to the approval of the assessment commit-

tees, will come into force after the 6th April, 1875. The overseers may include them in a supplemental list under § 25 of 25 & 26 Vict., c. 103, which enables the overseers to prepare such a list "when and so often as any property not included in the valuation list in force in any parish becomes ratable;" as the properties in question have become ratable by virtue of the present Act. If, however, the overseers do not take this step, the assessment committee may proceed in accordance with § 26 of the 25 & 26 Vict., c. 103; or the overseers, if they desire it, can obtain a valuation of the properties to be rated, with the consent of the assessment committee, under § 7 of the 27 & 28 Vict., c. 39. As regards the contributions to the common fund, it may be observed that if the guardians make their orders on the overseers before the 6th of April next, such orders must be based upon the valuation lists then in force, which will not include the properties in question; but if they make their orders after the 6th of April, these properties will be included.

As to Provisions of Sanitary Acts as defined by 35 & 36 Vict., c. 79.

12. The provisions of the Sanitary Acts, as defined by the Public Health Act, 1872, (1) with respect to any special assessment of wood lands for the purpose of any rate under those Acts shall be deemed to extend to and include land used for a plantation or a wood, or for the growth of saleable underwood, or for both such purposes, and made rateable by this Act to the poor rate.

(1) See the 35 & 36 Vict., c. 79, § 60.

Saving as to Mine where Dues payable in Kind.

13. Nothing in this Act shall apply to a mine of which the royalty or dues are for the time

being wholly reserved in kind, or to the owner or occupier thereof. (1)

(1) See Introduction, *ante*, pp. 20–25; and § 3, *supra*. Where the royalty or dues are wholly reserved in kind, the rating will continue as before, unaffected by the present Act (see R. *v.* St. Austell, 5 B. & A. 693); but where they are paid partly in kind and partly in money, the mine will be ratable under the provisions of the present Act (see § 7, *supra*).

Repeal of 43 *Eliz., c.* 2, *as to Saleable Underwood.*

14. So much of the Act of the forty-third year of the reign of Queen Elizabeth, chapter two, intituled "An Act for the relief of the poor," as relates to the taxation of an occupier of saleable underwoods is hereby repealed as from the date at which the provisions of this Act with respect to the taxation of occupiers of land used for the growth of saleable underwood come into operation: (1)

Provided that this repeal shall not affect anything duly done or suffered before the said date, or any right acquired or liability accrued before the said date, or any legal proceeding or remedy in respect of any such right or liability, and every such legal proceeding or remedy may be carried on and enforced in like manner as if this repeal had not been enacted.

(1) See note (4) to § 3, *supra*, and see also § 11, *supra*. This change seems to have been made in order to place salable underwoods and other woods on the same legal footing as regards ratability; but the practical effect in that respect is to a great extent

neutralized by the special mode of valuing wood land which is prescribed by § 4, subsection (*a*). The land used for the growth of salable underwood is to be valued with due regard to the purpose for which it is occupied, but the land used for a plantation or wood is to be valued as if it were let and occupied in its natural and unimproved state. (See note (1) thereon, *supra;* and see also note (3) to subsection (*b*) *supra.*)

The well-known clause in § 1 of the 43 Eliz., c. 2, must in future be read as if the words "salable underwoods" were omitted, and the descriptions of the properties mentioned in § 3 of the present Act were inserted. (See Introduction, *ante*, pp. 6–16.) The original clause refers to "every occupier of lands, houses, tithes impropriate or propriations of tithes, coal mines and salable underwoods, in the said parish;" but it seems that it must hereafter be read as if it ran as follows:—"every occupier of lands, including land used for a plantation or a wood or for the growth of salable underwood and not subject to any right of common; of houses; of tithes impropriate or propriations of tithes; of mines of every kind; and of rights of fowling, of shooting, of taking or killing game or rabbits, and of fishing, when severed from the occupation of the land."

Definitions of Terms (*see sect.* 15 *of* 25 & 26 *Vict., c.* 103.)

15. In this Act, unless the context otherwise requires,—

The term "gross value" has the same meaning as gross estimated rental in the Union Assessment Committee Act, 1862: (1)

The term "local rate" means any county rate, borough rate, highway rate, and other local rate leviable upon property rateable to the relief of the poor:

The term "valuation list" means, as regards any parish or place for which there is no valuation list, the poor rate:

The term "assessment committee" means, in relation to any parish or place where there is no assessment committee, the persons having power to make and assess the poor rate in such parish or place.

(1) The following is the provision in § 15 of 25 & 26 Vict., c. 103:—

"The gross estimated rental, for the purpose of the schedule to this Act, shall be the rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, if any; provided that nothing herein contained shall repeal or interfere with the provisions contained in the first section of the said Act (six and seven *William* the Fourth, chapter ninety-six) defining the net annual value of the hereditaments to be rated."

APPENDIX.

Circular issued by the Local Government Board.

THE RATING ACT, 1874.
(37 & 38 Vict., c. 54.)

LOCAL GOVERNMENT BOARD, WHITEHALL, S.W.,
24th November, 1874.

SIR—I am directed by the Local Government Board to draw the attention of the Assessment Committee to the Rating Act, 1874 (37 & 38 Vict., c. 54), which was passed during the last session of Parliament, to amend the law respecting the liability and valuation of certain descriptions of property for the purpose of rates.

Although the Act will not come into operation so as to render the property affected by its provisions liable to be actually rated until the 6th day of April, 1875, it will be seen by section 11 that, for the purpose of enabling any hereditament to be included in a valuation list, which will come into force after that day, the Act takes effect from the date when it passed, viz., the 7th of August, 1874.

In order, therefore, that a proper basis may be provided for the rates to be made during the ensuing parochial year, it is desirable that, in all those cases where new or supplemental valuation lists will be necessary in order to the assessment of any property made rateable by the above-mentioned Act, directions should be forthwith given for the preparation of such

lists, in order that their revision may be proceeded with, and that they may be ready for approval as early as practicable after the 6th of April next.

The main object of the Act is to abolish the exemptions from rating which have hitherto existed with respect to the following properties:—

1. Land used for a plantation or a wood.
2. Rights of sporting, when severed from the occupation of the land.
3. Mines other than coal mines.

I.—*As to Plantations and Woods.*

Under the former law (43 Elizabeth, c. 2), saleable underwoods alone, of all descriptions of woods, were rateable; whereas, under the new Act, land used for a plantation or a wood, as well as land used for the growth of saleable underwood, is rendered liable to assessment subject to the exception hereinafter referred to.

It is to be noted that the timber and other trees or shrubs themselves are not made assessable, but the land on which they are growing; and therefore the present statute expressly repeals so much of the 43rd of Elizabeth as relates to the assessment of the occupier of rateable underwood, and imposes the liability in respect of the land on which it is produced.

In dealing, therefore, in future with wood land of every kind, the subject in respect of which the assessment is made will be the land itself, and not the underwood, timber, or other trees produced upon it.

The Act classifies this description of property under three heads, viz.:—

1. Land used only as a plantation or a wood.
2. Land used for the growth of saleable underwood.

3. Land used both for a plantation or a wood, and also for the growth of saleable underwood.

1. In the first case, viz., where the land is used only for a plantation or a wood, and not for the growth of saleable underwood, the Act provides that the gross and rateable value (meaning by gross value the gross estimated rental, as defined by the Union Assessment Committee Act, 1862) shall be estimated as if the land, instead of being a plantation or a wood, were let and occupied in its natural and unimproved state.

It will be the duty, therefore, of the Assessment Committee to deal with the land as if it were divested of timber or wood of any description, and to determine its value without taking into account any improvement which has been made, or of which the land might be capable.

It will be observed that the words used are "as if the land, instead of being a plantation or a wood, were let and *occupied* in its natural and unimproved state," and the word "occupied" was introduced in order to show clearly that the capabilities of the land for improvement were to be excluded from consideration in estimating the rent at which it might reasonably be expected to let from year to year, and that the land was to be valued as if it would continue to be occupied in its natural state, without any expenditure of capital in its improvement; or, in other words, as if it were waste land.

It may be useful to state for the information of the Assessment Committee, that in the Act for the valuation of lands and heritages in Scotland (17 and 18 Vict., c. 91), a somewhat similar enactment is found, as section 6 of that Act provides that "where lands consist of woods, copse, or underwood, the yearly value of the same shall be taken to be the rent at

which such lands might, in their natural state, be reasonably expected to let from year to year as pasture or grazing lands."

2. The second case is that of land used exclusively for the growth of saleable underwood; and the statute requires that in such case the value shall be estimated as if the land were let for that purpose.

It has already been stated that hitherto it has not been the land, but its produce, viz., the saleable underwood, which has been assessable; and although the present Act reverses that rule, and renders the land assessable instead, the mode of arriving at the value will virtually remain the same, as the value of the land can only be arrived at by estimating the value of its produce.

3. With respect to the third case of composite woods, *i.e.*, where the land is used both for a plantation or a wood, and also for the growth of saleable underwood, the value is to be estimated either as if the land were used only for a plantation or a wood, or as if the land were used only for the growth of the saleable underwood growing thereon, as the Assessment Committee may determine.

In this case, therefore, it is entirely within the discretion of the Assessment Committee to adopt either alternative; but it must be borne in mind that if they assess the land as if it were used for the growth of saleable underwood, the land cannot be valued as if it were let for the growth of saleable underwood, and capable of improvement for that purpose, but only in respect of the saleable underwood actually growing thereon, irrespective of any capacity for improvement by the removal of trees, or otherwise.

It should be added that wood lands, which are subject to rights of common, are not rendered rateable by the Act.

II.—*As to Rights of Sporting and Fishing.*

The Assessment Committee are aware that under the statute (43 Elizabeth, c. 2) rights of sporting, when severed from the occupation of the land, have not been considered to be assessable. Thus, if the owner let his land, reserving to himself the right of sporting, or let his land to one person and the right of sporting to another, no one according to the general opinion could be rated in respect of such right, although the land itself might be let at a lower rent in consequence of the existence of the right so severed.

Where, however, the occupier of the land, whether as owner or tenant, possessed the right of sporting, and either retained it himself or let it to another person, the Courts held that in estimating the value of the land to the occupier, the value of the right so possessed, or let by him, ought to be taken into account.

In the case of the Queen *v.* the Battle Union, decided in the Court of Queen's Bench in 1866, Chief Justice Cockburn said:—

"The right to take game upon land is an incident to the occupation of the land. If the land is let without any reservation or previous granting of that right, the right follows as a necessary consequence of the right of occupation. If we find that the occupier of the land derives a benefit, whether from taking game himself, or from a pecuniary recompense made to him for allowing some one else to take it, it follows, inasmuch as the right to take the game is *ex concessis* merely an element of value, that where the two things are thus combined in one person, the right to game must be taken as an element in arriving at the rateable value of the occupation."—L. R. 2, Q. B., 13.

Under the previous law, therefore, although the right itself was in no case separately rated, still, under certain circumstances, it formed an element in estimating the rateable value of the land; but hereafter the right, whenever severed, will be separately rateable, except where the owner retains both the land and the right, or lets the land and retains the right without letting it. (1)

Where the right is not severed, or where the owner retains both the land and the right, or lets them both to one tenant, the owner or occupier will continue to be rateable upon the same principle as heretofore; but, in any other case, the right will be dealt with under section 6 of the new Act.

That section provides that where any right of sporting is severed from the occupation of the land and is not let, and the owner of such right receives rent for the land, the right shall not be separately valued or rated, but the gross and rateable value of the land shall be estimated as if the right were not severed. (1)

It will be seen, therefore, that in the particular case referred to, and which, as the Board believe, represents the ordinary arrangement between landlord and tenant, the right, although severed, will not be valued separately; but, as in the case where the owner retains both the land and the right, the right will simply be considered as an element in arriving at the rateable value of the occupation.

The direction of the statute is that the value of the land shall be estimated *as if the right were not severed.* It would appear, therefore, that in dealing with the right as an element of value, it ought not to be estimated upon any such consideration as that of the rent,

(1) See subsequent paragraph (the third from the end of the circular) and the note thereon (*post*, p. 60).

which a third person might be found to give for it; but according to its worth, if any, to the occupier of the land, upon the supposition that the right is not severed; or, in other words, that he himself is entitled to exercise the right, without the power of making a profit by letting it.

The effect, therefore, of this provision will be to place those lands which are let with a reservation to the owner of the right of sporting, on the same footing in relation to rateability as the lands which he himself occupies, retaining the right to the game upon them.

Thus, if there should be in the same parish, or union, two farms, one being in the occupation of the owner and another in the occupation of a tenant, the landlord in both cases having the right of sporting and not letting it, the proper course would seem to be to apply the same principle of assessment to the two farms, and to assess that in the occupation of the tenant, so far as the right of sporting constitutes an element of value, upon precisely the same basis as that retained by the owner.

It would, however, be manifestly unjust that, if the rateable value of any property happens to be increased by the addition of the value of the right of sporting, the occupier should have to bear the additional rate in respect of such increase; and, with the view of enabling him to deduct from his rent the additional rate so occasioned, the same section (6) requires the Assessment Committee, on the application of such occupier, to certify in the valuation list, or otherwise, the fact and amount of such increase.

The preceding remarks are mainly directed to those cases where the right of sporting is retained by the owner. Where, however, it is let, it will be rateable

as a separate hereditament, and the ordinary rules of law for determining the gross estimated rental and rateable value of other kinds of property will apply.

There may also be some few exceptional cases where the right, although distinct from the ownership of the land, as under a grant of free warren or other special grant or reservation, is of some real and appreciable value, and in these cases also the ordinary principles of assessment will apply.

The foregoing observations relative to the right of sporting are equally applicable to the future assessment of the right of fishing.

As to Mines.

This Act also extends the liability to assessment to mines of every kind not mentioned in the Act 43rd Elizabeth, c. 2.

The only mines mentioned in that Act are coal mines; consequently, the law with respect to coal mines is not affected by the present measure, and those mines remain rateable upon the same principles as heretofore.

With respect to mines other than coal mines, the Courts have held that where the lord's dues are reserved in kind—that is to say, where the lord receives not a money rent, but a fixed proportion of the produce—he (the lord) is rateable in respect of those dues, but that he is not rateable where the reservation is that of a money rent.

The present Act does not apply to mines the dues of which are *wholly* reserved in kind; and the owner of such mines will remain rateable as heretofore.

In the case of mines, the dues of which are reserved in money, or partly in money and partly in kind, the occupier will now be rateable, and the ordinary prin-

ciples of assessment will apply, except as regards tin, lead, and copper mines.

The rules for the assessment of tin, lead, and copper mines, when the dues are not wholly reserved in kind, are comprised in section 7, and are to the following effect:—

When the mine is occupied under a lease (the term lease including sett, licence, or agreement) granted without fine on a reservation wholly or partly of dues or rent, the gross value of the mine is to be taken to be the annual amount of the whole of the dues payable during the year ending on the thirty-first day of December preceding the date at which the valuation list is made, in addition to the annual amount of any fixed rent which may not be satisfied by such dues.

The rateable value of the mine is to be the same as the gross value, except that where the person receiving the dues or rent is liable for repairs, insurance, or other expenses necessary to maintain the mine in a state to command the annual amount of dues or rent, the average annual cost of such repairs, insurance, and other expenses is to be deducted from the gross value for the purpose of calculating the rateable value.

In the following cases, namely,—

1. Where the mine is occupied under a lease granted wholly or partly on a fine; and
2. Where the mine is worked by the owner; and
3. In the case of any other such mine to which the foregoing provisions do not apply;

the gross and rateable annual value of the mine is to be the annual amount of the dues, or dues and rent, at which the mine might be reasonably expected to let without fine on a lease of the ordinary duration,

according to the usage of the country, if the tenant undertook to pay all tenant's rates and taxes and tithe rentcharge, and also the repairs, insurance, and other expenses necessary to maintain the mine in a state to command such annual dues, or dues and rent.

When a tin, copper, or lead mine is rateable under this section, the whole of the machinery and surface works and buildings within the boundaries granted by the lease, with the exception of dwelling houses, will be covered by the assessment estimated upon the dues in the manner already explained.

Any dwelling houses, however, on the mine, and any machinery or buildings not situate within such boundaries, must be separately valued according to the ordinary principles of assessment.

It will be observed that in the case of tin, copper, and lead mines, the basis of the assessment will be the amount of the dues payable during the year ending on the 31st of December preceding the date at which the valuation list is made.

This date has reference to section 10 of the Metalliferous Mines Regulation Act, 1872 (35 & 36 Vict., c. 77), under which the owner or agent of every mine to which that Act applies is required to make a return to the Inspector of the District, on behalf of the Secretary of State, of the quantity of mineral sold or produced from the mine. It was considered convenient that the assessment should be based upon the dues ascertainable at a date at which the accounts were required to be made up for another purpose; and, having regard to this provision, it will probably be found more convenient to defer calling for supplementary valuation lists in those parishes in which mines of the description lastly referred to are situate until after the 31st of December next.

Miscellaneous Provisions.

The foregoing provisions are those which chiefly affect the duties of the Assessment Committee.

There are others which provide for the deduction of rates under existing contracts, and for the rating of other persons than the occupiers, and to which it will only be necessary to refer very briefly.

Where the rateable value of any wood land is increased by reason of the Act, the occupier under any agreement or lease made before the passing of the Act is enabled to deduct from his rent the additional rate paid by him on any such increase of rateable value, and it will be the duty of the Assessment Committee, on the application of the occupier, to certify the fact and amount of such increase, as in the case where the occupier becomes liable to an increased rate in respect of a right of sporting retained by the owner, and not let.

Again, the occupier of a mine, who is now exempt from being rated, is enabled, during an existing lease or agreement, to deduct a moiety of any rate imposed upon him in consequence of the Act, unless the terms of the contract are such as to show that at the time of the making of the contract he undertook to bear all future rates which might be imposed in respect of the mine in the event of the abolition of the exemption.

The Act also provides that the purser, secretary, or chief managing agent of any tin, lead, or copper mine may, if the overseers think fit, be rated as the occupier.

It further provides that where a right of sporting is severed from the land and let, either the owner or lessee of the right may, in the discretion of the overseers, be rated for the same.

In like manner the owner of any right of sporting, when severed, although not let, may be rated as the occupier thereof. (2)

It is important to observe that in those cases where any person is authorized by the Act to deduct any rate or part of a rate from any rent, royalty, or dues payable by him, the person receiving the rent, royalty, or dues, has the same right of objection and appeal with reference to the valuation list or rate as the occupier.

The Board cannot attempt to do more in a circular letter than point out the principles which will govern the assessment of the several kinds of property now rendered subject to local rates. The application of those principles to individual cases will rest with the Assessment Committee, and the Board entertain no doubt that they will discharge this important and somewhat difficult duty in a careful, considerate, and impartial manner.—I am, Sir, your obedient servant,

JOHN LAMBERT, Secretary.

To the Clerk to the Assessment Committee.

(2) In reply to inquiries, the Local Government Board have explained that this paragraph should be read as if the following words were added to it:—"Except, as already stated, where the owner receives rent for the land over which the right extends." (See preceding paragraph, *ante*, p. 54.)

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VI

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